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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,840	01/12/2004	Holger Jungmann	3340A/BECK (310105-00053)	8438
26304	7590	02/10/2006	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			WINAKUR, ERIC FRANK	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/755,840	JUNGMAN, HOLGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric F. Winakur	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25 January 2006 has been entered.

### ***Claim Objections***

2. Claim 16 is objected to because of the following informalities: it appears that claim 16 should depend from claim 15 to provide antecedent basis for the claim terms. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al. (previously cited) in view of Lambert et al. Berger et al. teach an apparatus and method as illustrated in Figures 1, 18, and 19, in particular, and described in column 14, that illuminates a subject with excitation light (700 - 1000 nm), collects Raman spectra from the subject, and performs data analysis on the collected spectra

for determining concentration of analytes. The analysis includes PLS techniques, which are known correlation techniques. Berger et al. teach all of the features of the claimed invention except that the analysis of the spectra is enabled for determination of psychoactive substances. Lambert et al. teach analysis of Raman spectra for determination of blood levels of a variety of substances of interest, including psychoactive substances (column 5, lines 28 - 52; Example 8 on columns 38 - 39). Further, Lambert et al. teach that the Raman spectra can be obtained from tissue (Figure 19; column 25, line 40 - column 26, line 4) and that timing and processing can be used to select signals corresponding to desired information. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Berger et al. to include analysis of the Raman spectra for detection of psychoactive substances, as taught by Lambert et al., since it is desirable to detect the presence/amount of these substances (illegal drugs) in a subject.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1 - 17 have been considered but are moot in view of the new ground(s) of rejection.
6. Although the previous rejections are withdrawn, the Berger et al. reference is applied as part of the rejection set forth in paragraph 3 above. Thus, Applicant's remarks regarding the Berger et al. reference that are pertinent to the rejection will be addressed.
7. Applicant states that the wavelengths of excitation light differ between Applicant's disclosed invention and that of Berger et al. It is noted that the wavelength range is only

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positively claimed in dependent claim 5, and the claimed range of 200 - 800 nm includes the wavelengths disclosed by both Applicant and Berger et al. Without positively claiming the narrower 200 - 400 nm range in the independent claims, Berger et al. meets the "light of a predetermined wavelength" limitation.

8. Applicant's assertion that Raman spectroscopy is concerned with the detection of different substances than those set forth in the amended claims is addressed in the rejection of paragraph 3 above.

9. Differences between the underlying scientific principles of fluorescence and Raman spectroscopy cannot serve to distinguish the claims as amended, since the claims are not limited to fluorescence spectroscopy.

10. Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

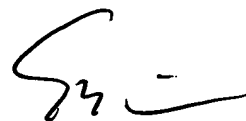
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on 571/272-4737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur  
Primary Examiner  
Art Unit 3735

6 February 2006